

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE DIAMOND FOODS, INC.,  
SECURITIES LITIGATION

| Case No.: 11-cv-05386-WHA

**[PROPOSED] ORDER TO SHOW CAUSE**

### This Document Relates to:

## All Actions

To: Barclays Capital  
c/o Adam S. Paris  
Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, CA 90067-1725

On September 26, 2013, this Court issued its Preliminary Approval Order of the proposed settlement in the above captioned matter, setting the Final Approval Hearing for January 9, 2014, and requiring, among other things, that brokers and custodians who held Diamond common stock on behalf of clients submit a letter confirming that they have either provided the Notice of Proposed Settlement to their clients or provided the Claims Administrator with a mailing list of these clients to Class Counsel. Barclays Capital (“Barclays”) and Lehman Brothers Inc., whose North American investment-banking and

1 trading divisions were acquired by Barclays in October 2008 shortly after Lehman  
 2 Brothers had filed for bankruptcy, were identified in the records of the Depository Trust  
 3 Clearing Corporation as nominees that held Diamond stock during the Class Period  
 4 (October 5, 2010 through February 8, 2012), potentially on behalf of clients. Plaintiff has  
 5 represented to the Court that Barclays was sent the Notice, as well as letters and email  
 6 communications from Class Counsel concerning its obligation to submit the required  
 7 broker letter, and was provided a form letter of compliance to complete, but it has not  
 8 responded. Additionally, Plaintiff has represented that it contacted Barclays by mail and  
 9 email on several occasions as described in the Declaration of Krissi T. Gore of Class  
 10 Counsel's Compliance with May 31, 2013 Order Re Form and Manner of Class Notice  
 11 dated August 21, 2013 [ECF 273], the Declaration of Krissi T. Gore Regarding Broker  
 12 Compliance dated November 26, 2013 [ECF 299-2], and the Supplemental Declaration of  
 13 Krissi T. Gore Regarding Broker Compliance dated December 30, 2013 [ECF 301-2],  
 14 which were filed in connection with the settlement of this Action, and that these efforts  
 15 have continued through January 13, 2014.

16       The Court conducted the Final Approval Hearing on January 9, 2014, and issued  
 17 the Order Granting Final Approval of the Proposed Class Settlement on January 10, 2014.  
 18 Because Barclays did not submit the required broker compliance letter, the Court is  
 19 concerned that Barclays' clients who purchased Diamond common stock during the Class  
 20 Period did not or will not have sufficient opportunity to submit a claim to receive their  
 21 appropriate share of the settlement consideration. In the event that Barclays did not  
 22 distribute the Notice of Proposed Settlement to its clients by November 20, 2013, the time  
 23 for its clients to submit a claim will be extended from the existing deadline of January 9,  
 24 February 28, 2014.  
 25 2014, which has already passed, to ~~February 15, 2014~~.

26       Accordingly, having considered the circumstances described above, NOW,  
 27

1 THEREFORE,

2 IT IS ORDERED that Barclays is to appear and demonstrate why it should not be  
 3 held in contempt for failing to respond to Class Counsel's notice and instructions  
 4 regarding this Court's Orders. Barclays may file a responsive brief in this Court no later  
 5 than January 27, 2014 at noon and serve it on all parties by the same date and time. This  
 6 brief shall set forth the reasons why Barclays has not submitted the required broker letter  
 7 demonstrating that it distributed the Notice of Proposed Settlement to any clients who  
 8 purchased Diamond common stock during the Class Period, or in the alternative, provided  
 9 the names and addresses of such clients to the Claims Administrator in accordance with  
 10 the Notice that was distributed on October 1, 2013. The parties may file any replies  
 11 thereto on or before January 29, 2014, at noon. A hearing to consider the responses and to  
 12 determine whether Barclays should be held in contempt, is scheduled for ~~January 30,~~  
 13 February 6,  
 14 2014, at 1:00 p.m.

15 IT IS FURTHER ORDERED that Barclays identify the date on which it  
 16 distributed the Notice of Proposed Settlement to its clients who purchased Diamond  
 17 common stock during the Class Period, if applicable, and, if the date of distribution of the  
 18 Notice was later than November 20, 2013, that the time for its clients to submit a Claim to  
 19 February 28,  
 20 the Claims Administrator is extended to ~~February 15~~, 2014. Barclays shall give  
 21 appropriate notice of the extension of time to file a Claim set forth above, and confirm to  
 22 this Court that it has done so. Barclays may be relieved of its obligation to appear on  
 23 February 6,  
 24 ~~January 30~~, 2014 to show cause only if it provides to Class Counsel [Meryl W. Roper,  
 25 Chitwood Harley Harnes LLP, 1230 Peachtree Street, NE, Suite 2300, Atlanta, GA 30309,  
 26 (404) 873-3900, mroper@chitwoodlaw.com], on or before that date, the required broker  
 27 compliance letter or a statement confirming that it did not hold Diamond common stock  
 28 on behalf of any clients during the Class Period; and

1 IT IS FURTHER ORDERED that Class Counsel serve this Order to Show Cause  
2 personally, if possible, as well as by overnight delivery.

3 IT IS SO ORDERED.

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5 Dated: January 14, 2014.

6   
7 WILLIAM ALSUP  
8 UNITED STATES DISTRICT JUDGE

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